

**ASSEMBLY BILL**

**No. 809**

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**Introduced by Assembly Member Blakeslee**

February 22, 2007

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An act to amend Sections 399.12 and 399.12.5 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, as introduced, Blakeslee. Energy: renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard).

The existing definition of an “eligible renewable energy resource,” includes the electricity generated by a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of January 1, 2003. An exception to this provision provides that a small hydroelectric generation facility that is an eligible

renewable energy resource retains eligibility if efficiency improvements at the facility undertaken after January 1, 2003, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in a new or increased appropriation or diversion of water from a watercourse. The existing definition of an “eligible renewable energy resource” provides that a new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water from a watercourse. The existing definition of an “eligible renewable energy resource” provides that an existing conduit hydroelectric facility, as defined by a specified federal law, of 30 megawatts or less is an eligible renewable energy source and provides that a new conduit hydroelectric facility is an eligible renewable energy resource so long as it does not require a new or increased appropriation or diversion of water from a watercourse.

Under existing law, the State Water Resources Control Board is required to consider and act upon all applications for permits to appropriate water. Existing law requires the board to expedite processing of applications for certain small hydroelectric powerplants and applications or petitions for retrofit of hydroelectric plants at existing dams, canals, or conduits where the streamflow regime will not be changed and where there will be no significant adverse environmental impacts.

Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with authority over matters relating to water quality. Existing law provides for the issuance by the state board, or by a regional board to which the state board has delegated authority, of a water quality certification pursuant to the federal Clean Water Act.

This bill would recast the provisions pertaining to the eligibility of electricity generated from hydroelectric facilities to meet the renewables portfolio standard. The bill would provide that a small hydroelectric generation facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource if it does not change the streamflow regime or cause significant adverse environmental impacts and that a hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, and utilizes the hydroelectric potential of a conduit, as defined, is an eligible renewable energy resource if it does not change the streamflow regime or cause significant adverse environmental impacts. The bill would

provide that a small hydroelectric generation facility of 30 megawatts or less that does not meet the above-described requirements is eligible only if a retail seller owned or procured the electricity from the facility as of December 31, 2005, and that the facility does not lose its eligibility if efficiency improvements undertaken after January 1, 2003, cause the generating capacity of the facility to exceed 30 megawatts, if the efficiency improvements do not change the streamflow regime or cause significant adverse environmental impacts. The bill would provide that a hydroelectric facility of 30 megawatts or less that utilizes the hydroelectric potential of a conduit, but does not meet the above-described requirements, is an eligible renewable energy resource if a retail seller owned or procured the electricity from the facility as of December 31, 2005. The bill would provide that the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if the incremental increase is the result of efficiency improvements from a retrofit that is eligible for expedited processing as determined by the State Water Resources Control Board and the hydroelectric generation facility has received a water quality certification from the board or a regional board.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 399.12 of the Public Utilities Code is  
2 amended to read:  
3 399.12. For purposes of this article, the following terms have  
4 the following meanings:  
5 (a) “Delivered” and “delivery” have the same meaning as  
6 provided in subdivision (a) of Section 25741 of the Public  
7 Resources Code.  
8 (b) “Eligible renewable energy resource” means an electric  
9 generating facility that meets the definition of “in-state renewable  
10 electricity generation facility” in Section 25741 of the Public  
11 Resources Code, subject to the following limitations:  
12 (1) ~~(A) An existing small hydroelectric generation facility of~~  
13 ~~30 megawatts or less shall be eligible only if a retail seller owned~~  
14 ~~or procured the electricity from the facility as of December 31,~~

2005. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water from a watercourse. *Hydroelectric generation is an eligible renewable energy resource to the extent authorized in Section 399.12.5.*

~~(B) Notwithstanding subparagraph (A), an existing conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource. A new conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource so long as it does not require a new or increased appropriation or diversion of water from a watercourse.~~

~~(3)~~

(2) A facility engaged in the combustion of municipal solid waste ~~shall is not be considered~~ an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(c) “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(d) “Local publicly owned electric utility” has the same meaning as provided in subdivision (d) of Section 9604.

(e) “Procure” means that a retail seller receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. ~~Nothing in this~~ *This article is intended to does not* imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article.

(f) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article.

(g) (1) “Renewable energy credit” means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) “Renewable energy credit” includes all renewable and environmental attributes associated with the production of

1 electricity from the eligible renewable energy resource, except for  
2 an emissions reduction credit issued pursuant to Section 40709 of  
3 the Health and Safety Code and any credits or payments associated  
4 with the reduction of solid waste and treatment benefits created  
5 by the utilization of biomass or biogas fuels.

6 (3) No electricity generated by an eligible renewable energy  
7 resource attributable to the use of nonrenewable fuels, beyond a  
8 de minimus quantity, as determined by the Energy Commission,  
9 shall result in the creation of a renewable energy credit.

10 (h) "Retail seller" means an entity engaged in the retail sale of  
11 electricity to end-use customers located within the state, including  
12 any of the following:

13 (1) An electrical corporation, as defined in Section 218.

14 (2) A community choice aggregator. The commission shall  
15 institute a rulemaking to determine the manner in which a  
16 community choice aggregator will participate in the renewables  
17 portfolio standard program subject to the same terms and conditions  
18 applicable to an electrical corporation.

19 (3) An electric service provider, as defined in Section 218.3,  
20 for all sales of electricity to customers beginning January 1, 2006.  
21 The commission shall institute a rulemaking to determine the  
22 manner in which electric service providers will participate in the  
23 renewables portfolio standard program. The electric service  
24 provider shall be subject to the same terms and conditions  
25 applicable to an electrical corporation pursuant to this article.  
26 Nothing in this paragraph shall impair a contract entered into  
27 between an electric service provider and a retail customer prior to  
28 the suspension of direct access by the commission pursuant to  
29 Section 80110 of the Water Code.

30 (4) "Retail seller" does not include any of the following:

31 (A) A corporation or person employing cogeneration technology  
32 or producing electricity consistent with subdivision (b) of Section  
33 218.

34 (B) The Department of Water Resources acting in its capacity  
35 pursuant to Division 27 (commencing with Section 80000) of the  
36 Water Code.

37 (C) A local publicly owned electric utility.

38 SEC. 2. Section 399.12.5 of the Public Utilities Code is  
39 amended to read:

1     399.12.5. ~~Notwithstanding Section 399.12, a~~(a) *For purposes*  
2 *of this section, “conduit” means canals, laterals, ditches, flumes,*  
3 *millraces, pipes, and other manmade devices and their*  
4 *appurtenances, which are used for the purpose of taking or*  
5 *receiving water from any river, creek, stream, or lake and operated*  
6 *for the distribution of water for agricultural, municipal, industrial,*  
7 *or other use.*

8     (b) (1) *A small hydroelectric generation facility of 30 megawatts*  
9 *or less that commences operation after December 31, 2005, is an*  
10 *eligible renewable energy resource if it does not change the*  
11 *streamflow regime or cause significant adverse environmental*  
12 *impacts.*

13     (2) *A small hydroelectric facility of 30 megawatts or less that*  
14 *commences operation after December 31, 2005, and utilizes the*  
15 *hydroelectric potential of a conduit, is an eligible renewable energy*  
16 *resource if it does not change the streamflow regime or cause*  
17 *significant adverse environmental impacts.*

18     (c) (1) *A small hydroelectric generation facility of 30 megawatts*  
19 *or less that does not meet the requirements of paragraph (1) of*  
20 *subdivision (b) is an eligible renewable energy resource only if a*  
21 *retail seller owned or procured the electricity from the facility as*  
22 *of December 31, 2005.*

23     (2) ~~A small hydroelectric generation facility that satisfies the~~  
24 ~~criteria for an eligible renewable energy resource pursuant to~~  
25 ~~Section 399.12 of 30 megawatts or less that is eligible pursuant~~  
26 ~~to paragraph (1) shall not lose its eligibility if efficiency~~  
27 ~~improvements undertaken after January 1, 2003, cause the~~  
28 ~~generating capacity of the facility to exceed 30 megawatts, and~~  
29 ~~the efficiency improvements do not result in a new or increased~~  
30 ~~appropriation or diversion of water from a watercourse change the~~  
31 ~~streamflow regime or cause significant adverse environmental~~  
32 ~~impacts. The entire generating capacity of the facility shall be~~  
33 ~~eligible.~~

34     (3) *A hydroelectric facility of 30 megawatts or less that utilizes*  
35 *the hydroelectric potential of a conduit that does not meet the*  
36 *requirements of paragraph (2) of subdivision (b) is an eligible*  
37 *renewable energy resource if a retail seller owned or procured*  
38 *the electricity from the facility as of December 31, 2005.*

39     (d) *The incremental increase in the amount of electricity*  
40 *generated from a hydroelectric generation facility as a result of*

1 *efficiency improvements at the facility is electricity from an eligible*  
2 *renewable energy resource, without regard to the electrical output*  
3 *of the facility, if both of the following are true:*

4 *(1) The incremental increase is the result of efficiency*  
5 *improvements from a retrofit that is eligible for expedited*  
6 *processing as determined by the State Water Resources Control*  
7 *Board pursuant to Section 1490 of the Water Code.*

8 *(2) The hydroelectric generation facility has received*  
9 *certification from the State Water Resources Control Board*  
10 *pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec.*  
11 *1341), or has received certification from a regional board to which*  
12 *the state board has delegated authority to issue certification.*